

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FRANKIE JAMES GARNER,  
Petitioner,

v.

C.A. No. 04-12017-EFH

COMMONWEALTH,  
Respondent.

ORDER

On September 10, 2004, the Court received a petition for a writ of habeas corpus under Section 2254 from Frankie James Garner, an inmate at Souza-Baranowski Correctional Center.

ACCORDINGLY,

(1) The Clerk shall correct the case caption to reflect that the only respondent to this action is Lois Russo, the Superintendent of Souza-Baranowski Correctional Center ("SBCC"). A writ of habeas corpus must be "directed to the person having custody of the person detained." 28 U.S.C. § 2243. Petitioner's legal custodian is the superintendent of SBCC, the individual having day-to-day control over the facility in which petitioner is being detained. Vasquez v. Reno, 233 F.3d 688, 694 (1st Cir. 2000), cert. denied, sub nom. Vasquez v. Ashcroft, 122 S. Ct. 43 (2001); see Mass. Gen. Laws ch.125, § 14 (the superintendent shall be responsible for the custody and control of all prisoners in the correctional institution); AND

(2) Pursuant to Rule 4 of the Rules Governing Section 2254 cases, the Clerk of this Court is hereby ordered to serve a copy of the Petition for a Writ of Habeas Corpus by mailing copies of the same, certified mail, to (1) Lois Russo, Superintendent, Souza-Baranowski Correctional Center, P.O. Box 8000, Shirley, MA 01464; AND (2) Cathryn Neaves, Chief, Appellate Division, Attorney General for the Commonwealth of Massachusetts, One Ashburton Place, 18<sup>th</sup> Floor, Boston, MA 02108-1598.

(3) It is further ordered that Respondent shall, within 20 days of receipt of this Order, file an answer (or other proper responsive pleading) to the Petition for Writ of Habeas Corpus.

(4) This Court further requests Respondent, as part of the return, to file such documents which reflect on whether Petitioner has exhausted his available state remedies with respect to the matters raised by the Petition.

9/21/04  
DATE

s/ Edward F. Harrington  
UNITED STATES DISTRICT JUDGE

(2254serv.ord - 12/95)

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